

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Elaine Lu

1 Reuben Yeroushalmi (SBN 193981)
 2 Peter T. Sato (SBN 238486)
YEROUSHALMI & YEROUSHALMI
 3 An Association of Independent Law Corporations
 4 9100 Wilshire Boulevard, Suite 240W
 Beverly Hills, California 90212
 Telephone: (310) 623-1926
 5 Facsimile: (310) 623-1930

6 Attorneys for Plaintiff,
 Consumer Advocacy Group, Inc.
 7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 CONSUMER ADVOCACY GROUP, INC.,
 12 in the public interest,

13 Plaintiff,

14 v.

15 SF SUPERMARKET, INC., a California
 16 Corporation;
 17 SF SUPERMARKET FRESNO, INC., a
 California Corporation;
 18 SF SUPERMARKET SUNRISE, INC., a
 California Corporation;
 19 TRANS FAMILY, INC., a California
 Corporation;
 20 TRANS FAMILY, LLC., a California
 21 Limited Liability Company; and
 22 DOES 1-20,

23 Defendants.

CASE NO.

COMPLAINT FOR PENALTY AND
 INJUNCTION

Violation of Proposition 65, the Safe
 Drinking Water and Toxic Enforcement
 Act of 1986 (*Health & Safety Code*, §
 25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
 CASE (exceeds \$25,000)

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action against
 25 defendants SF SUPERMARKET, INC., SF SUPERMARKET FRESNO, INC., SF
 26 SUPERMARKET SUNRISE, INC., TRANS FAMILY, INC., TRANS FAMILY, LLC., and
 27 DOES 1-20 as follows:
 28

1
2 **THE PARTIES**

- 3 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
4 organization qualified to do business in the State of California. CAG is a person within
5 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
6 as a private attorney general, brings this action in the public interest as defined under
7 Health and Safety Code section 25249.7, subdivision (d).
- 8 2. Defendant SF SUPERMARKET, INC., ("SF") is a California Corporation, qualified to
9 do business and doing business in the State of California at all relevant times herein.
- 10 3. Defendant SF SUPERMARKET FRESNO, INC. ("SF FRESNO") is a California
11 Corporation, qualified to do business and doing business in the State of California at all
12 relevant times herein.
- 13 4. Defendant SF SUPERMARKET SUNRISE, INC. ("SF SUNRISE") is a California
14 Corporation, qualified to do business and doing business in the State of California at all
15 relevant times herein.
- 16 5. Defendant TRANS FAMILY, INC. ("TRANS") is a California Corporation, qualified to
17 do business and doing business in the State of California at all relevant times herein.
- 18 6. Defendant TRANS FAMILY, LLC, ("TRANS LLC") is a California Corporation,
19 qualified to do business and doing business in the State of California at all relevant times
20 herein.
- 21 7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
22 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
23 complaint to allege their true names and capacities when ascertained. Plaintiff is
24 informed, believes, and thereon alleges that each fictitiously named defendant is
25 responsible in some manner for the occurrences herein alleged and the damages caused
26 thereby.
- 27
28

- 1 8. At all times mentioned herein, the term "Defendants" includes SF, SF FRESNO, SF
2 SUNRISE, TRANS, TRANS LLC, and DOES 1-20.
- 3 9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
4 times mentioned herein have conducted business within the State of California.
- 5 10. Upon information and belief, at all times relevant to this action, each of the Defendants,
6 including DOES 1-20, was an agent, servant, or employee of each of the other
7 Defendants. In conducting the activities alleged in this Complaint, each of the
8 Defendants was acting within the course and scope of this agency, service, or
9 employment, and was acting with the consent, permission, and authorization of each of
10 the other Defendants. All actions of each of the Defendants alleged in this Complaint
11 were ratified and approved by every other Defendant or their officers or managing agents.
12 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
13 wrongful conduct of each of the other Defendants.
- 14 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
15 Defendants was a person doing business within the meaning of Health and Safety Code
16 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
17 employees at all relevant times.

18 **JURISDICTION**

- 19 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
20 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
21 those given by statute to other trial courts. This Court has jurisdiction over this action
22 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
23 violations of Proposition 65 in any Court of competent jurisdiction.
- 24 13. This Court has jurisdiction over Defendants named herein because Defendants either
25 reside or are located in this State or are foreign corporations authorized to do business in
26 California, are registered with the California Secretary of State, or who do sufficient
27 business in California, have sufficient minimum contacts with California, or otherwise
28

1 intentionally avail themselves of the markets within California through their manufacture,
2 distribution, promotion, marketing, or sale of their products within California to render
3 the exercise of jurisdiction by the California courts permissible under traditional notions
4 of fair play and substantial justice.

- 5 14. Venue is proper in the County of Los Angeles because one or more of the instances of
6 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
7 because Defendants conducted, and continue to conduct, business in the County of Los
8 Angeles with respect to the consumer product that is the subject of this action.

9 **BACKGROUND AND PRELIMINARY FACTS**

- 10 15. In 1986, California voters approved an initiative to address growing concerns about
11 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
12 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
13 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
14 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
15 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
16 from contamination, to allow consumers to make informed choices about the products
17 they buy, and to enable persons to protect themselves from toxic chemicals as they see
18 fit.

- 19 16. Proposition 65 requires the Governor of California to publish a list of chemicals known to
20 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
21 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
22 chemicals and chemical families. Proposition 65 imposes warning requirements and
23 other controls that apply to Proposition 65-listed chemicals.

- 24 17. All businesses with ten (10) or more employees that operate or sell products in California
25 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
26 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
27 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
28

1 reasonable" warnings before exposing a person, knowingly and intentionally, to a
2 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

3 18. Proposition 65 provides that any person "violating or threatening to violate" the statute
4 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

5 "Threaten to violate" means "to create a condition in which there is a substantial
6 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

7 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
8 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

9 19. Plaintiff identified certain practices of manufacturers and distributors of Seaweed
10 Products of exposing, knowingly and intentionally, persons in California to the
11 Proposition 65-listed chemicals of such products without first providing clear and
12 reasonable warnings of such to the exposed persons prior to the time of exposure.
13 Plaintiff later discerned that Defendants engaged in such practice.

14 20. On February 27, 1987 the Governor of California added Lead and Lead Compounds
15 ("LEAD") to the list of chemicals known to the State to cause developmental and
16 reproductive toxicity, and on October 1, 1992, the Governor added LEAD to the list of
17 chemicals known to the State to cause cancer. Pursuant to Health and Safety Code
18 sections 25249.9 and 25249.10, twenty (20) months after addition of LEAD to the list of
19 chemicals known to the State to cause cancer and reproductive toxicity, LEAD became
20 fully subject to Proposition 65 warning requirements and discharge prohibitions.

21 21. On October 1, 1987, the Governor of California added Cadmium and Cadmium
22 compounds ("CADMIUM") to the list of chemicals known to the State to cause cancer
23 (Cal. Code Regs. tit. 27, § 27001(b)). On May 1, 1997, the Governor of California added
24 CADMIUM to the list of chemicals known to the State to cause reproductive toxicity
25 (Cal. Code Regs. tit. 27, § 27001(c)). CADMIUM is known to the State to cause cancer
26 and developmental, male reproductive toxicity. Pursuant to Health and Safety Code
27 sections 25249.9 and 25249.10, twenty (20) months after addition of CADMIUM to the
28

1 list of chemicals known to the State to cause cancer, and reproductive toxicity,
2 CADMIUM became fully subject to Proposition 65 warning requirements and discharge
3 prohibitions.

4 **SATISFACTION OF PRIOR NOTICE**

5 22. On or about April 25, 2019, Plaintiff gave notice of alleged violations of Health and
6 Safety Code section 25249.6, concerning consumer products exposures subject to a
7 private action to SF, SF FRESNO, SF SUNRISE, TRANS, TRANS LLC, and to the
8 California Attorney General, County District Attorneys, and City Attorneys for each city
9 containing a population of at least 750,000 people in whose jurisdictions the violations
10 allegedly occurred, concerning the product Seaweed.

11 23. Before sending the notices of alleged violation, Plaintiff investigated the consumer
12 products involved, the likelihood that such products would cause users to suffer
13 significant exposures to LEAD and CADMIUM, and the corporate structure of each of
14 the Defendants.

15 24. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
16 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
17 Plaintiff who executed the certificate had consulted with at least one person with relevant
18 and appropriate expertise who reviewed data regarding the exposures to LEAD and
19 CADMIUM the subject Proposition 65-listed chemical of this action. Based on that
20 information, the attorney for Plaintiff who executed the Certificate of Merit believed
21 there was a reasonable and meritorious case for this private action. The attorney for
22 Plaintiff attached to the Certificate of Merit served on the Attorney General the
23 confidential factual information sufficient to establish the basis of the Certificate of
24 Merit.

25 25. Plaintiff's notices of alleged violations also included a Certificate of Service and a
26 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
27 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

1 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notices of the alleged violations to SF, SF FRESNO, SF SUNRISE, TRANS,
3 TRANS LLC, and the public prosecutors referenced in Paragraph 20.

4 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
5 any applicable district attorney or city attorney has commenced and is diligently
6 prosecuting an action against the Defendants.

7
8 **FIRST CAUSE OF ACTION**

9 (By CONSUMER ADVOCACY GROUP, INC. and against SF, SF FRESNO, SF
10 SUNRISE, TRANS, TRANS LLC and DOES 1-10 for Violations of Proposition 65, The
11 Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§*
12 *25249.5, et seq.*))

13 **Seaweed**

14 28. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
15 reference paragraphs 1 through 27 of this complaint as though fully set forth herein.

16 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Roasted Seaweed ("Seaweed"), including but not
18 limited (Outer packaging) "Roasted SEAWEED Snack;" "Roasted with Olive Oil;"
19 "PRODUCT OF KOREA;" "Net WT. 0.17 oz(5g)X3;" "DISTRIBUTED BY: C nature;"
20 "www.bnbglobal.biz;" "6 09722 64724 3;" (Inner packaging) "MATNARA;" "All
21 Natural;" "6 09722 64723 6".

22 30. Seaweed contains LEAD.

23 31. Defendants knew or should have known that LEAD has been identified by the State of
24 California as a chemical known to cause cancer and reproductive toxicity and therefore
25 was subject to Proposition 65 warning requirements. Defendants were also informed of
26 the presence of LEAD in Seaweed within Plaintiff's notice of alleged violations further
27 discussed above at Paragraph 22.

28 32. Plaintiff's allegations regarding Seaweed concerns "[c]onsumer products exposure[s],"
which "is an exposure that results from a person's acquisition, purchase, storage,

1 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
2 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.

3 Seaweed is a consumer product, and, as mentioned herein, exposures to lead took place
4 as a result of such normal and foreseeable consumption and use.

5 33. Plaintiff is informed, believes, and thereon alleges that between April 25, 2016 and the
6 present, each of the Defendants knowingly and intentionally exposed their California
7 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold as
8 mentioned above, to LEAD, without first providing any type of clear and reasonable
9 warning of such to the exposed persons before the time of exposure. Defendants have
10 distributed and sold Seaweed in California. Defendants know and intend that California
11 consumers will use and consume Seaweed, thereby exposing them to LEAD. Defendants
12 thereby violated Proposition 65.

13 34. The principal routes of exposure are through dermal contact, ingestion and inhalation.
14 Persons sustain exposures by handling Seaweed without wearing gloves or any other
15 personal protective equipment, or by touching bare skin or mucous membranes with
16 gloves after handling Seaweed, as well as through direct and indirect hand to mouth
17 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
18 Seaweed. And as to Defendants' employees, employees may be exposed to LEAD in the
19 course of their employment by handling, distributing, and selling Seaweed.

20 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
21 Proposition 65 as to Seaweed have been ongoing and continuous, as Defendants engaged
22 and continue to engage in conduct which violates Health and Safety Code section
23 25249.6, including the manufacture, distribution, promotion, and sale of Seaweed, so that
24 a separate and distinct violation of Proposition 65 occurred each and every time a person
25 was exposed to lead by Seaweed as mentioned herein.

1 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to LEAD from Seaweed, pursuant to Health
6 and Safety Code section 25249.7(b).

7 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

9
10 **SECOND CAUSE OF ACTION**

11 (By CONSUMER ADVOCACY GROUP, INC. and against SF, SF FRESNO, SF
12 SUNRISE, TRANS, TRANS LLC, and DOES 11-20 for Violations of Proposition 65, The
13 Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§*
14 *25249.5, et seq.*))

15 **Seaweed**

16 39. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 38 of this complaint as though fully set forth herein.

18 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Seaweed.

20 41. Seaweed contains CADMIUM.

21 42. Defendants knew or should have known that CADMIUM has been identified by the State
22 of California as a chemical known to cause cancer and reproductive toxicity and therefore
23 was subject to Proposition 65 warning requirements. Defendants were also informed of
24 the presence of CADMIUM in Seaweed within Plaintiff's notice of alleged violations
25 further discussed above at Paragraph 22.

26 43. Plaintiff's allegations regarding Seaweed concerns "[c]onsumer products exposure[s],"
27 which "is an exposure that results from a person's acquisition, purchase, storage,
28 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b).*

1 Seaweed is a consumer product, and, as mentioned herein, exposures to CADMIUM took
2 place as a result of such normal and foreseeable consumption and use.

3 44. Plaintiff is informed, believes, and thereon alleges that between April 25, 2016 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold as
6 mentioned above, to CADMIUM, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.
8 Defendants have distributed and sold Seaweed in California. Defendants know and
9 intend that California consumers will use and consume Seaweed, thereby exposing them
10 to CADMIUM. Defendants thereby violated Proposition 65.

11 45. The principal routes of exposure are through dermal contact, ingestion and inhalation.
12 Persons sustain exposures by handling Seaweed without wearing gloves or any other
13 personal protective equipment, or by touching bare skin or mucous membranes with
14 gloves after handling Seaweed, as well as through direct and indirect hand to mouth
15 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
16 Seaweed. And as to Defendants' employees, employees may be exposed to CADMIUM
17 in the course of their employment by handling, distributing, and selling Seaweed.

18 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
19 Proposition 65 as to Seaweed have been ongoing and continuous, as Defendants engaged
20 and continue to engage in conduct which violates Health and Safety Code section
21 25249.6, including the manufacture, distribution, promotion, and sale of Seaweed, so that
22 a separate and distinct violation of Proposition 65 occurred each and every time a person
23 was exposed to CADMIUM by Seaweed as mentioned herein.

24 47. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
25 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
26 violations alleged herein will continue to occur into the future.

1 48. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to CADMIUM from Seaweed, pursuant to
3 Health and Safety Code section 25249.7(b).

4 49. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
5 filing this Complaint.

6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

- 8 1. A permanent injunction mandating Proposition 65-compliant warnings;
9 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
10 3. Costs of suit;
11 4. Reasonable attorney fees and costs; and
12 5. Any further relief that the court may deem just and equitable.

13
14 Dated: October 4, 2019

YEROUSHALMI & YEROUSHALMI

15
16
17 BY: 

18 Reuben Yeroushalmi
19 Attorneys for Plaintiff,
20 Consumer Advocacy Group, Inc.
21
22
23
24
25
26
27
28